



House of Representatives

General Assembly

File No. 435

January Session, 2001

Substitute House Bill No. 6914

House of Representatives, April 24, 2001

The Committee on Environment reported through REP. STRATTON of the 17th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THIRD PARTY LIABILITY AND REVISIONS TO THE TRANSFER ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (a) No owner of real property shall be liable for
2 any costs or damages pursuant to any provision of the general statutes
3 or common law to any person other than this state, any other state or
4 the federal government, with respect to any pollution or source of
5 pollution on or emanating from such owner's real property that
6 occurred or existed prior to such owner taking title to such property,
7 provided:

8 (1) The owner did not establish or create a condition or facility at or
9 on such property that reasonably can be expected to create a source of
10 pollution to the waters of the state for purposes of section 22a-432 of
11 the general statutes and such owner is not responsible pursuant to any
12 other provision of the general statutes for creating any pollution or
13 source of pollution on such property;

14 (2) The owner is not affiliated with any person responsible for such
15 pollution or source of pollution through any direct or indirect familial
16 relationship, or any contractual, corporate or financial relationship
17 other than that by which such owner's interest in the property was
18 conveyed or financed; and

19 (3) The Commissioner of Environmental Protection has approved in
20 writing: (A) An investigation of the pollution and sources of pollution
21 on or emanating from the real property which pollution or sources of
22 pollution occurred prior to such owner's taking title to such property,
23 conducted in accordance with the prevailing standards and guidelines
24 which investigation was conducted by an environmental professional
25 licensed in accordance with section 22a-133v of the general statutes,
26 and (B) a final remedial action report prepared by a licensed
27 environmental professional that demonstrates that remediation of such
28 pollution and sources of pollution was completed in accordance with
29 the remediation standards in regulations adopted pursuant to section
30 22a-133k of the general statutes.

31 (b) The provisions of this section do not relieve any liability of a real
32 property owner who fails to comply with the provisions of an
33 environmental land use restriction created pursuant to section 22a-
34 133o of the general statutes for such real property or with the
35 conditions of a variance for the real property that was approved by the
36 commissioner in accordance with regulations adopted pursuant to
37 section 22a-133k of the general statutes.

38 Sec. 2. Section 22a-134 of the general statutes is repealed and the
39 following is substituted in lieu thereof:

40 For the purposes of this section and sections 22a-134a to 22a-134d,
41 inclusive, as amended by this act:

42 (1) "Transfer of establishment" means any transaction or proceeding
43 through which an establishment undergoes a change in ownership, but

44 does not mean (A) conveyance or extinguishment of an easement, (B)
45 conveyance of [property] an establishment through a [judicial]
46 foreclosure, as defined in subsection (b) of section 22a-452f, (C)
47 conveyance of a deed in lieu of foreclosure to [an institutional] a
48 lender, [including, but not limited to, a banking institution] as defined
49 in and that qualifies for the secured lender exemption pursuant to
50 subsection (b) of section 22a-452f, (D) conveyance of a security interest,
51 [including, without limitation, a mortgage] as defined in subdivision
52 (7) of subsection (b) of section 22a-452f, (E) [renewal of a lease, (F)
53 conveyance, assignment or termination] execution of a lease for a
54 period less than [twenty-five years from the date of such conveyance,
55 assignment or termination] ninety-nine years, including options or
56 extensions of such period, [(G)] (F) any change in ownership approved
57 by the Probate Court, [(H) conveyance] (G) devolution of title to a
58 surviving joint tenant, or to a trustee, executor, or administrator under
59 the terms of a testamentary trust or will, or by intestate succession, [(I)]
60 (H) corporate reorganization not substantially affecting the ownership
61 of the establishment, [including, but not limited to, stock dividend
62 distributions or stock distributions in connection with a merger, (J) the
63 original] (I) the issuance of stock or other securities of an entity which
64 owns or operates an establishment, [(K)] (J) the transfer of stock,
65 securities or other ownership interests representing less than [a
66 majority of the voting power] forty per cent of the ownership of the
67 entity that owns or operates the establishment, [(L)] (K) any
68 conveyance of an interest in an establishment where the transferor is
69 the sibling, spouse, child, parent, grandparent, child of a sibling or
70 sibling of a parent of the transferee, (L) conveyance of an interest in an
71 establishment to a trustee of an inter vivos trust created by the
72 transferor solely for the benefit of one or more of the sibling, spouse,
73 child, parent, grandchild, child of a sibling or sibling of a parent of the
74 transferor, (M) any conveyance of a portion of a parcel upon which
75 portion no establishment is or has been located and upon which there
76 has not occurred a discharge, spillage, uncontrolled loss, seepage or

77 filtration of hazardous waste or hazardous substance, provided either
78 the area of such portion is not greater than fifty per cent of the area of
79 such parcel or written notice of such proposed conveyance and an
80 environmental condition assessment form for such parcel is provided
81 to the commissioner sixty days prior to such conveyance, (N)
82 conveyance of a service station, as defined in subdivision (5) of this
83 section, (O) any conveyance of [a parcel] an establishment which, prior
84 to July 1, 1997, had been developed solely for residential use and such
85 use has not changed, (P) any conveyance of [a parcel] an establishment
86 to any entity created or operating under chapter 130 or 132, or to an
87 urban rehabilitation agency, as defined in section 8-292, or to a
88 municipality under section 32-224, or to the Connecticut Development
89 Authority or any subsidiary of the authority, (Q) any conveyance of a
90 parcel in connection with the acquisition of properties to effectuate the
91 development of the overall project, as defined in section 32-651, (R) the
92 conversion of a general or limited partnership to a limited liability
93 company under section 34-199, (S) the transfer of general partnership
94 property held in the names of all of its general partners to a general
95 partnership which includes as general partners immediately after the
96 transfer all of the same persons as were general partners immediately
97 prior to the transfer, [and] (T) the transfer of general partnership
98 property held in the names of all of its general partners to a limited
99 liability company which includes as members immediately after the
100 transfer all of the same persons as were general partners immediately
101 prior to the transfer, or (U) acquisition of an establishment by any
102 governmental or quasi-governmental condemning authority;

103 (2) "Commissioner" means the Commissioner of Environmental
104 Protection or [his] the designated agent of the commissioner;

105 (3) "Establishment" means any real property at which or any
106 business operation from which (A) on or after November 19, 1980,
107 there was generated, except as the result of remediation of polluted
108 soil, groundwater or sediment, more than one hundred kilograms of

109 hazardous waste in any one month, (B) hazardous waste generated at a
110 different location [by another person or municipality] was recycled,
111 reclaimed, reused, stored, handled, treated, transported or disposed of,
112 (C) the process of dry cleaning was conducted on or after May 1, 1967,
113 (D) furniture stripping was conducted on or after May 1, 1967, or (E) a
114 vehicle body repair shop or vehicle painting [shop is or] facility was
115 located on or after May 1, 1967;

116 (4) "Hazardous waste" means any waste which is (A) hazardous
117 waste identified in accordance with Section 3001 of the federal
118 Resource Conservation and Recovery Act of 1976, 42 USC 6901 et seq.,
119 (B) hazardous waste identified by regulations adopted by the
120 Commissioner of Environmental Protection, or (C) polychlorinated
121 biphenyls in concentrations greater than fifty parts per million except
122 that sewage, sewage sludge and lead paint abatement wastes shall not
123 be considered to be hazardous waste for the purposes of this section
124 and sections 22a-134a to 22a-134d, inclusive, as amended by this act;

125 (5) "Service station" means a retail operation involving the resale of
126 motor vehicle fuel including, but not limited to, gasoline, diesel fuel
127 and kerosene and which operation does not otherwise meet the
128 definition of an establishment;

129 (6) "Certifying party" means, in the case of a Form III or Form IV, a
130 person associated with the transfer of an establishment who signs a
131 Form III or Form IV and who agrees to investigate the parcel in
132 accordance with [the standards adopted by the commissioner in
133 regulations adopted in accordance with the provisions of chapter 54 or,
134 until January 1, 2002, or the adoption of such regulations, whichever is
135 sooner, in accordance with] prevailing standards and guidelines and to
136 remediate pollution caused by any release at the [parcel] establishment
137 in accordance with the remediation standards and, in the case of a
138 Form I or Form II, a transferor of an establishment who signs the
139 certification on a Form I or II;

140 (7) "Party associated with the transfer of an establishment" means
141 (A) the present or past owner or operator of the establishment, (B) the
142 owner of the real property on which the establishment is located, (C)
143 the transferor, transferee, lender, guarantor or indemnitor, [(C)] (D) the
144 business entity which operates or operated the establishment, or [(D)]
145 (E) the state;

146 (8) "Remediation standards" means regulations adopted by the
147 commissioner pursuant to section 22a-133k;

148 (9) "Parcel" means piece, parcel or tract of land which constitutes an
149 establishment, as defined in subdivision (3) of this section, or on which
150 is or was located any business operation which constitutes an
151 establishment;

152 (10) "Form I" means a written [declaration] certification by the
153 transferor of an establishment on a form prescribed and provided by
154 the commissioner that no discharge, spillage, uncontrolled loss,
155 seepage or filtration of hazardous waste, a hazardous substance that
156 was designated a hazardous waste after November 17, 1980, by the
157 Resource Conservation and Recovery Act, 42 USC 6901 et seq., a
158 hazardous substance for which there are remediation standards, or a
159 hazardous substance for which the remediation standards have a
160 process for calculating the numeric criteria of such substance, has
161 occurred at the [parcel] establishment which [declaration] certification
162 is based on an investigation of the parcel in accordance with [the
163 standards adopted by the commissioner in regulations adopted in
164 accordance with the provisions of chapter 54 or, until January 1, 2002,
165 or the adoption of such regulations, whichever is sooner, in accordance
166 with] prevailing standards and guidelines;

167 (11) "Form II" means a written [declaration] certification by the
168 transferor of an establishment on a form prescribed and provided by
169 the commissioner that the parcel has been investigated in accordance
170 with [the standards adopted by the commissioner in regulations

171 adopted in accordance with the provisions of chapter 54 or, until
172 January 1, 2002, or the adoption of such regulations, whichever is
173 sooner, in accordance with] prevailing standards and guidelines and
174 that (A) any discharge, spillage, uncontrolled loss, seepage or filtration
175 of hazardous waste or a hazardous substance which has occurred at
176 the [parcel] establishment has been remediated in accordance with the
177 remediation standards and that the remediation has been approved in
178 writing by the commissioner or has been verified pursuant to section
179 22a-133x or section 22a-134a in a writing attached to such form by a
180 licensed environmental professional to have been performed in
181 accordance with the remediation standards, [or] (B) the commissioner
182 has determined in writing or a licensed environmental professional has
183 verified pursuant to section 22a-133x or section 22a-134a in a writing
184 attached to the form that no remediation is necessary to achieve
185 compliance with the remediation standards, or (C) stating a Form IV
186 verification has been submitted to the commissioner that since the date
187 of the submission of said Form IV, no discharge, spillage, uncontrolled
188 loss, seepage or filtration of hazardous waste or a hazardous substance
189 has occurred at the establishment, which certification is based on an
190 investigation of the parcel in accordance with prevailing standards and
191 guidelines;

192 (12) "Form III" means a written certification signed by a certifying
193 party on a form prescribed and provided by the commissioner, which
194 certification states that (A) a discharge, spillage, uncontrolled loss,
195 seepage or filtration of hazardous waste or a hazardous substance has
196 occurred at the [parcel] establishment or the environmental conditions
197 at the [parcel] establishment are unknown, and (B) that the person
198 signing the certification agrees to investigate the parcel in accordance
199 with the standards adopted by the commissioner in regulations
200 adopted in accordance with [the provisions of chapter 54 or, until
201 January 1, 2002, or the adoption of such regulations, whichever is
202 sooner, in accordance with] prevailing standards and guidelines and to
203 remediate [the parcel] pollution caused by any release at the

204 establishment in accordance with the remediation standards;

205 (13) "Form IV" means a written certification signed by one or more
206 certifying parties on a form prescribed and provided by the
207 commissioner and which is accompanied by a written determination
208 by the commissioner or by a licensed environmental professional
209 pursuant to section 22a-134a or 22a-133x, which certification states and
210 is accompanied by documentation demonstrating that the parcel has
211 been investigated in accordance with [the standards adopted by the
212 commissioner in regulations adopted in accordance with the
213 provisions of chapter 54 or, until January 1, 2002, or the adoption of
214 such regulations, whichever is sooner, in accordance with] prevailing
215 standards and guidelines and that (A) there has been a discharge,
216 spillage, uncontrolled loss, seepage or filtration of hazardous waste or
217 a hazardous substance on the [parcel] establishment, and (B) all actions
218 to remediate [the parcel] any pollution caused by any release at the
219 establishment have been taken in accordance with the remediation
220 standards except postremediation monitoring, natural attenuation
221 monitoring or the recording of an environmental land use restriction,
222 and (C) the person or persons signing the certification agree, in
223 accordance with the representations made in the form, to conduct
224 postremediation monitoring or natural attenuation monitoring in
225 accordance with the remediation standards and if further investigation
226 and remediation are necessary [based upon the results of such
227 monitoring,] to take further action to investigate the [parcel]
228 establishment in accordance with the standards adopted by the
229 commissioner in regulations adopted in accordance with the
230 provisions of chapter 54 or, until January 1, 2002, or the adoption of
231 such regulations, whichever is sooner, in accordance with prevailing
232 standards and guidelines and to remediate the [parcel] establishment
233 in accordance with the remediation standards;

234 (14) "Person" means person, as defined in section 22a-2;

235 (15) "Remediate" means to contain, remove or abate pollution,
236 potential sources of pollution and substances in soil or sediment which
237 pose an unacceptable risk to human health or the environment and
238 includes, but is not limited to, the reduction of pollution by natural
239 attenuation;

240 (16) "Licensed environmental professional" means an environmental
241 professional licensed pursuant to section 22a-133v;

242 (17) "Environmental condition assessment form" means a form
243 prescribed and provided by the commissioner, prepared under the
244 supervision of a licensed environmental professional, and [prepared]
245 executed by (A) the certifying party under sections 22a-134 to 22a-134e,
246 inclusive, or (B) the owner of the property under section 22a-133x
247 which form describes the environmental conditions at the [parcel]
248 establishment;

249 (18) "Pollution" means pollution, as defined in section 22a-423;

250 (19) "Verification" means the rendering of a written opinion by a
251 licensed environmental professional that an investigation of the parcel
252 has been performed in accordance with prevailing standards and
253 guidelines and that the [parcel] establishment has been remediated in
254 accordance with the remediation standards;

255 (20) "Vehicle" means [an automobile, bus, truck or truck tractor, but
256 does not mean] any motorized device for conveying persons or objects
257 except for an aircraft, boat, railroad car or engine, or farm tractor;

258 (21) "Business operation" means any business that has, or any series
259 of substantially similar businesses that have operated continuously or
260 with only brief interruption on the same parcel, either with a single
261 owner or successive owners;

262 (22) "Corporate reorganization not substantially affecting the
263 ownership of an establishment" means implementation of a business

264 plan to restructure a corporation through a merger, spin-off or other
265 plan or reorganization under which the direct owner of the
266 establishment does not change;

267 (23) "Form IV verification" means the rendering of a written opinion
268 by a licensed environmental professional, after a Form IV has been
269 filed, that postremediation monitoring, natural attenuation or the
270 recording of an environmental land use restriction has been completed
271 in accordance with the Form IV;

272 (24) "Hazardous substance" means hazardous substance, as defined
273 in Section 101 of the Comprehensive Environmental Response,
274 Compensation, and Liability Act of 1980, 42 USC Section 9601, or a
275 petroleum product or by-product;

276 (25) "Sediment" means undissolved material that is transported or
277 deposited, through natural means, by water.

278 Sec. 3. Section 22a-134a of the general statutes is repealed and the
279 following is substituted in lieu thereof:

280 (a) No person shall transfer an establishment except in accordance
281 with the provisions of sections 22a-134 to 22a-134e, inclusive, as
282 amended by this act.

283 [(b) A lien pursuant to section 22a-452a shall not be placed against
284 real estate on which a service station was transferred and in operation
285 on or after May 1, 1967, provided the transferor certifies to the
286 transferee that (1) the service station, or any part thereof, complies
287 with regulations adopted by the Commissioner of Environmental
288 Protection pursuant to subsection (d) of section 22a-449 concerning
289 design, construction, installation and maintenance of underground
290 facilities storing oil or petroleum liquids, (2) there has been no spill on
291 the real estate or any spill has been remediated in accordance with
292 procedures approved by the commissioner and the commissioner has

293 determined that such spill does not pose a threat to human health or
294 safety or to the environment which would warrant containment or
295 removal or other mitigation measures and (3) any hazardous waste or
296 oil or petroleum liquid remaining on the real estate is being managed
297 in accordance with the provisions of this chapter and chapter 446k and
298 regulations adopted thereunder.]

299 [(c)] (b) The commissioner may adopt regulations, in accordance
300 with the provisions of chapter 54, to implement the provisions of this
301 section.

302 [(d)] (c) Prior to transferring an establishment, the transferor shall
303 submit to the transferee a complete Form I or a Form II and, no later
304 than ten days after the transfer, shall submit a copy of such Form I or
305 Form II to the commissioner. The commissioner shall notify the
306 transferor no later than ninety days after the submission of such Form I
307 or Form II if the commissioner deems the Form I or Form II
308 incomplete. If the transferor is unable to submit a Form I or a Form II
309 to the transferee, the [certifying party] transferor shall, prior to the
310 transfer, [prepare and sign a] submit a complete Form III or Form IV [,
311 and the transferor shall submit a copy of such Form III or Form IV]
312 prepared and signed by a party associated with the transfer to the
313 transferee and, no later than ten days after the transfer, shall submit a
314 copy of such Form III or Form IV to the commissioner. If no other
315 party associated with the transfer of an establishment prepares and
316 signs the proper form, the transferor shall have the obligation for such
317 preparation and signing.

318 [(e) Any person submitting a] (d) The certifying party to a Form I,
319 Form III or Form IV to the commissioner shall simultaneously submit
320 to the commissioner a complete environmental condition assessment
321 form and shall certify to the commissioner, in writing, that the
322 information contained in such form is correct and accurate to the best
323 of [his] the certifying party's knowledge and belief.

324 (e) The certifying party shall provide to the commissioner copies of
325 all technical plans, reports and other supporting documentation
326 relating to the investigation of the parcel or remediation of the
327 establishment.

328 (f) [Within fifteen days of his] No later than thirty days after receipt
329 of a Form III or Form IV, the commissioner shall notify the certifying
330 party whether the form is complete or incomplete. Within forty-five
331 days of [his] receipt of a complete Form III or IV, the commissioner
332 shall notify the certifying party in writing whether review and
333 approval of the remediation by the commissioner will be required, or
334 whether a licensed environmental professional may verify that the
335 investigation has been performed in accordance with [the standards
336 adopted by the commissioner in regulations adopted in accordance
337 with the provisions of chapter 54 or, until January 1, 2002, or the
338 adoption of such regulations, whichever is sooner, in accordance with]
339 prevailing standards and guidelines and that the remediation has been
340 performed in accordance with the remediation standards. Any person
341 who submitted a Form III to the commissioner prior to October 1, 1995,
342 [for a parcel which is not the subject of an order, consent order or
343 stipulated judgment issued or entered into pursuant to sections
344 22a-134 to 22a-134e, inclusive,] may submit an environmental
345 condition assessment form to the commissioner. The commissioner
346 shall, within forty-five days of receipt of such form, notify the
347 certifying party whether approval of the remediation by the
348 commissioner will be required or whether a licensed environmental
349 professional may verify that the remediation has been performed in
350 accordance with the remediation standards.

351 (g) In determining whether review and approval of the remediation
352 by the commissioner will be required, or whether a licensed
353 environmental professional may verify that the remediation has been
354 performed in accordance with the remediation standards, the
355 commissioner shall consider: (1) The potential risk to human health

356 and the environment posed by any discharge, spillage, uncontrolled
357 loss, seepage or filtration of hazardous waste [on the parcel] or a
358 hazardous substance at the establishment; (2) the degree of
359 environmental investigation at the parcel; (3) the proximity of the
360 [parcel] establishment to significant natural resources; (4) the character
361 of the land uses surrounding the [parcel] establishment; (5) the
362 complexity of the environmental condition of the [parcel]
363 establishment; and (6) any other factor the commissioner deems
364 relevant.

365 (h) If the commissioner notifies the certifying party to a Form III or
366 Form IV that a licensed environmental professional may verify the
367 remediation, [the] such certifying party shall, on or before thirty days
368 of the receipt of such notice or such later date as may be approved in
369 writing by the commissioner, submit a schedule for investigating and
370 remediating the [parcel] establishment. Such schedule shall, unless a
371 later date is specified in writing by the commissioner, provide that the
372 investigation shall be completed within two years of the date of receipt
373 of such notice and that remediation shall be initiated within three years
374 of the date of receipt of such notice. The schedule shall also include a
375 schedule for providing public notice of the remediation prior to the
376 initiation of such remediation in accordance with subsection (j) of this
377 section. [The commissioner may require the certifying party to submit
378 copies of technical plans and reports related to the investigation and
379 remediation at the parcel and may notify the] The commissioner shall
380 notify such certifying party if the commissioner determines that the
381 commissioner's review and written approval is necessary. [The
382 commissioner shall require the certifying party to submit to him all
383 technical plans and reports related to the investigation and
384 remediation of the parcel if the commissioner receives a written
385 request from any person for such information. The] Such certifying
386 party shall investigate the parcel and remediate the [parcel]
387 establishment in accordance with the proposed schedule. [The] Such
388 certifying party shall submit to the commissioner an independent

389 verification by a licensed environmental professional that the [parcel]
390 establishment has been remediated in accordance with the remediation
391 standards, and as applicable, a Form IV verification.

392 (i) If the commissioner notifies the certifying party to a Form III or
393 Form IV that [his] the commissioner's review and written approval of
394 the investigation of the parcel and remediation of the [parcel]
395 establishment is required, [the] such certifying party shall, on or before
396 thirty days of the receipt of such notice or such later date as may be
397 approved in writing by the commissioner, submit for the
398 commissioner's review and written approval a proposed schedule for:
399 (1) Investigating the parcel and remediating the [parcel] establishment;
400 (2) submitting to the commissioner scopes of work, technical plans,
401 technical reports and progress reports related to such investigation and
402 remediation; and (3) providing public notice of the remediation prior
403 to the initiation of such remediation in accordance with subsection (j)
404 of this section. Upon the commissioner's approval of such schedule,
405 [the] such certifying party shall, in accordance with the approved
406 schedule, submit scopes of work, technical plans, technical reports
407 and progress reports to the commissioner for [his] the commissioner's
408 review and written approval. [The] Such certifying party shall perform
409 all actions identified in the approved scopes of work, technical plans,
410 technical reports and progress reports in accordance with the
411 approved schedule. The commissioner may approve in writing any
412 modification proposed in writing by [the] such certifying party to such
413 schedule or investigation and remediation. The commissioner may, at
414 any time, notify [the] such certifying party in writing that the
415 commissioner's review and written approval is not required and that a
416 licensed environmental professional may verify that the remediation
417 has been performed in accordance with the remediation standards.

418 (j) The certifying party to a Form III or Form IV shall (1) publish
419 notice of the remediation, in accordance with the schedule submitted
420 pursuant to this section, in a newspaper having a substantial

421 circulation in the area affected by the establishment, (2) notify the
422 director of health of the municipality where the [parcel] establishment
423 is located of the remediation, and (3) either (A) erect and maintain for
424 at least thirty days in a legible condition a sign not less than six feet by
425 four feet on the [parcel] establishment, which sign shall be clearly
426 visible from the public highway, and shall include the words
427 "ENVIRONMENTAL CLEAN-UP IN PROGRESS AT THIS SITE. FOR
428 FURTHER INFORMATION CONTACT:" and include a telephone
429 number for an office from which any interested person may obtain
430 additional information about the remediation, or (B) mail notice of the
431 remediation to each owner of record of property which abuts the
432 [parcel] establishment, at the address for such property on the last-
433 completed grand list of the municipality where the [parcel]
434 establishment is located.

435 (k) The commissioner may issue an order to any person who fails to
436 comply with any provision of sections 22a-134 to 22a-134e, inclusive,
437 as amended by this act, including, but not limited to, any person who
438 [improperly files a Form I or Form II] fails to file a form, or files an
439 incomplete or incorrect form or to any person who fails to carry out
440 any activities to which that person agreed in a Form III or Form IV. [or
441 may] If no form is filed or if an incomplete or incorrect form is filed for
442 a transfer of an establishment, the commissioner may issue an order to
443 the transferor, the transferee, or both, requiring a filing. The
444 commissioner may also request that the Attorney General bring an
445 action in the superior court for the judicial district of Hartford to enjoin
446 any person who fails to comply with any provision of sections 22a-134
447 to 22a-134e, inclusive, as amended by this act, including, but not
448 limited to, any person who fails to file a form, improperly files a Form
449 I, [or] Form II, Form III or Form IV or the certifying party to a Form III
450 or Form IV to take any actions necessary to prevent or abate any
451 pollution at, or emanating from, the subject [parcel] establishment.
452 Any person to whom such an order is issued may appeal such order in
453 accordance with the procedures set forth in sections 22a-436 and 22a-

454 437.

455 (l) Notwithstanding the exemptions provided in subsection (a) of
456 section 22a-134, nothing contained in sections 22a-134 to 22a-134e,
457 inclusive, as amended by this act, shall be construed as creating an
458 innocent landowner defense for purposes of section 22a-452d.

459 (m) Notwithstanding any other provisions of this section, no person
460 shall be required to comply with the provisions of sections 22a-134 to
461 22a-134e, inclusive, as amended by this act, when transferring real
462 property (1) (A) for which a Form I or Form II has been filed on or after
463 October 1, 1995, or (B) for which a Form III or Form IV has been filed
464 and which has been remediated and such remediation has been
465 approved in writing by the commissioner or verified in writing in
466 accordance with this section by a licensed environmental professional
467 that an investigation has been performed in accordance with [the
468 standards adopted by the commissioner in regulations adopted in
469 accordance with the provisions of chapter 54 or, until January 1, 2002,
470 or the adoption of such regulations, whichever is sooner, in accordance
471 with] prevailing standards and guidelines and that the remediation
472 has been performed in accordance with the remediation standards,
473 and (2) at which no activities described in subdivision (3) of section
474 22a-134 have been conducted since the date of such approval or
475 verification or the date on which the Form I or Form II was filed.

476 (n) Failure of the commissioner to notify any party in accordance
477 with the provisions of this section in no way limits the ability of the
478 commissioner to enforce the provisions of sections 22a-134 to 22a-134f,
479 inclusive, as amended by this act.

480 Sec. 4. Section 22a-134d of the general statutes is repealed and the
481 following is substituted in lieu thereof:

482 [Any person who knowingly gives or causes to be given any false
483 information on any document required by sections 22a-134 to 22a-134e,

484 inclusive, or section 22a-133y or who fails to comply with the
485 provisions of said sections shall forfeit to the state a sum not to exceed
486 one hundred thousand dollars. A civil action shall be instituted to
487 recover such forfeiture.]

488 Any person who violates any provision of sections 22a-134a to 22a-
489 134e, inclusive, as amended by this act, or regulations issued in
490 accordance with the provisions of said sections shall be assessed a civil
491 penalty or shall be fined in accordance with section 22a-438.

492 Sec. 5. Subsection (j) of section 22a-134e of the general statutes is
493 repealed and the following is substituted in lieu thereof:

494 (j) The fees specified in this section shall be paid by [the transferee
495 of the establishment except that the fee for a Form III or Form IV shall
496 be paid, on and after July 1, 1994, by] the certifying party.

497 Sec. 6. Subsection (m) of section 22a-134e of the general statutes is
498 repealed and the following is substituted in lieu thereof:

499 (m) On and after October 1, 1995, the fee for filing a Form III or
500 Form IV shall be due in accordance with the following schedule: An
501 initial fee of two thousand dollars shall be submitted to the
502 commissioner with the filing of a Form III or Form IV. If a licensed
503 environmental professional verifies the remediation of the [parcel]
504 establishment and the commissioner has not notified the certifying
505 party that the commissioner's written approval of the remediation is
506 required, no additional fee shall be due. If the commissioner notifies
507 the certifying party that the commissioner's written approval of the
508 remediation is required, the balance of the total fee shall be due prior
509 to the commissioner's issuance of [his] the commissioner's final
510 approval of the remediation.

511 Sec. 7. Subsection (p) of section 22a-134e of the general statutes is
512 repealed and the following is substituted in lieu thereof:

513 (p) Notwithstanding any other provision of this section, the fee for
514 filing a Form II or Form IV for [a parcel] an establishment for which
515 the commissioner has issued a written approval of a remediation
516 under subsection (c) of section 22a-133x within three years of the date
517 of the filing of the form shall be the total fee for a Form III specified in
518 subsection (n) of this section and shall be due upon the filing of the
519 Form II or Form IV.

520 Sec. 8. (NEW) Any person who has submitted a Form I, Form II,
521 Form III or Form IV to the Commissioner of Environmental Protection
522 pursuant to section 22a-134a of the general statutes, as amended by
523 this act, may petition the commissioner to withdraw such form. Such
524 petitioner shall notify the transferor, the transferee and the certifying
525 party by certified mail. The petitioner shall make every reasonable
526 effort to identify the address of such transferor, transferee and
527 certifying party. The transferor, transferee and certifying party shall
528 have thirty days to submit to the commissioner written objections to
529 such petition. The commissioner may approve the petition if it
530 demonstrates to the commissioner's satisfaction that the property or
531 business was not an establishment or the transaction was not a transfer
532 at the time the form was submitted. If the commissioner approves the
533 petition, no further action is required by the certifying party with
534 respect to its obligations under the form, but the form and the fee shall
535 not be returned.

536 Sec. 9. (NEW) A lien pursuant to section 22a-452a of the general
537 statutes shall not be placed against real estate on which a service
538 station was transferred and in operation on or after May 1, 1967,
539 provided the transferor certifies to the transferee that (1) the service
540 station, or any part thereof, complies with regulations adopted by the
541 Commissioner of Environmental Protection pursuant to subsection (d)
542 of section 22a-449 of the general statutes concerning design,
543 construction, installation and maintenance of underground facilities
544 storing oil or petroleum liquids, (2) there has been no spill on the real

545 estate or any spill has been remediated in accordance with procedures
546 approved by the commissioner and the commissioner has determined
547 that such spill does not pose a threat to human health or safety or to
548 the environment which would warrant containment or removal or
549 other mitigation measures, and (3) any hazardous waste or oil or
550 petroleum liquid remaining on the real estate is being managed in
551 accordance with the provisions of chapter 446k of the general statutes
552 and regulations adopted thereunder.

ENV *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Minimal

Affected Agencies: Department of Environmental Protection,
Department of Correction

Municipal Impact: None

Explanation**State Impact:**

It is anticipated that the overall net fiscal impact due to the procedural changes in submittal/filing of forms (I, II, III or IV) and exemptions and modifications in the Transfer Act is anticipated to be minimal. Any increase in the filing of one form instead of another, and any resulting workload adjustment will be offset by fees.

The bill exempts, under certain circumstances, owners of real estate from liability to non-governmental entities for damages due to pollution on the land, which took place before the land was acquired. The limiting of liability is not anticipated to apply to many circumstances and result in increased costs to the state.

The changes in the penalty provisions are anticipated to minimally impact revenue. The current fine is up to \$100,000 for certain violations and instead, the penalty will now range from a fine up to \$25,000 to up to \$50,000 and or imprisonment for up to 3 years. The

Governor's FY 01 proposed budget includes both additional operating and bonding dollars for the expansion of the Department of Correction (DOC), as well as dollars to annualize funding for inmates being housed out of state. Although it is not anticipated that the proposal as described in the bill will result in a significant increase to the DOC inmate population, it should be noted that the establishment of new crimes, particularly those with mandatory sentences, will eventually result in the need for additional resources.

OLR BILL ANALYSIS**sHB 6914*****AN ACT CONCERNING THIRD PARTY LIABILITY AND REVISIONS TO THE TRANSFER ACT.*****SUMMARY:**

This bill exempts, under certain circumstances, the owner of real estate from liability to non-governmental entities for damages arising from pollution on his land that existed before he acquired title to it.

The bill extensively amends the Transfer Act, which regulates the sale or other transfer of (1) property where hazardous waste was generated or processed, and (2) dry cleaners and certain other businesses. It exempts some transactions from the act while including others.

Under current law, the transferor must complete one of four forms before transferring the property. The type of form that is filed, and the resulting obligations of the person signing the form, vary by whether there was a hazardous waste release on the property and, if so, whether it was remediated. The bill changes the circumstances under which these forms can be filed, who can sign them, and the obligations of the signer. The bill makes many procedural changes in how parties subject to the act and Department of Environmental Protection (DEP) must operate. It modifies the penalties that apply to violations of the law.

The bill expands the act to cover releases of certain hazardous substances in addition to the hazardous wastes already covered. As a result, it reduces the circumstances when a Form I, which indicates that there has not been a release on the property, can be filed. The bill generally requires the remediation of establishments, rather than parcels, as required under current law. Thus if a dry cleaner is located in a strip mall is transferred, the bill requires that just dry cleaning establishment, rather than the entire mall, be remediated.

The bill makes many minor changes to the Transfer Act.

EFFECTIVE DATE: October 1, 2001

LANDOWNER LIABILITY

The bill exempts, under certain circumstances, owners of real property from liability, other than to Connecticut, another state, or the federal government, for pollution from the property that occurred before the owner took title to the property. To be exempt, the owner may not:

1. have created a condition or facility that reasonably can be expected to pollute the state's water in violation of CGS § 22a-432;
2. have been responsible, under any other provision of state law, for creating any pollution or source of pollution on the property;
3. be affiliated with the person responsible for the pollution through any familial relationship or any business relationship (other than through the financing or conveyance of an interest in the property to the new owner).

In addition, the DEP commissioner must have approved, in writing, an investigation of the earlier pollution which is conducted (1) by a DEP-licensed environmental professional (LEP) and (2) in accordance with prevailing standards and guidelines. The commissioner must also have approved the LEP's final remediation action report, which demonstrates that the remediation of the pollution complies with DEP standards.

The bill applies to liability under Connecticut statutory and common law with regard to any pollution or source of pollution emanating from the property. The bill does not affect the owner's liability for failing to comply with an environmental land use restriction or conditions for a variance for the property created under state law.

TRANSFER ACT

Definitions

The Transfer Act applies to “establishments,” i.e. property where a business generated more than 100 kilograms (220 pounds) of hazardous wastes in any one month after November 18, 1980. The law exempts from this definition property where this amount of waste was generated by remediation of polluted soil. The bill expands this exception to include remediation of contaminated sediment or groundwater.

Establishments also includes properties where hazardous waste generated off-site by another party is recycled, reclaimed, reused, stored, handled, treated, transported, or disposed of. The bill extends this provision to cover properties where waste generated off-site by the property owner is so processed. By law, establishments also include property where dry cleaners, furniture strippers, and vehicle body repair or painting shops were located on or after May 1, 1967.

As described below, the bill expands the provisions of the act to cover releases of hazardous substances at establishments. These substances include a broad range of materials regulated under federal and state law, including petroleum and its by-products. As discussed below, a narrower definition applies to the filing of Form I for an uncontaminated property.

By law, the person who files a Form III or IV for a contaminated property is called the “certifying party”. This person must be associated with the transfer. The bill expands this definition of parties associated with the transfer to include (1) the establishment’s past owner, (2) its past or present operator (business operators are already included), and (3) the owner of the property on which the establishment is located. Under current law, the certifying party must agree to remediate the parcel. The bill instead requires him to remediate pollution caused by any release at the establishment. This provision and others in the bill appear to make the certifying party potentially responsible for remediating pollution that migrates off-site. The bill also refers to the person signing a Form I or II, but does not require him to remediate the parcel.

Exemptions from the Transfer Act

The bill exempts from the Transfer Act :

1. the acquisition of an establishment by a governmental or quasi-governmental authority,
2. the conveyance of an interest in an establishment to a trustee of an inter vivos trust created by the transferor solely for the interest of the transferor's spouse or blood relative, and
3. the issuance of a subsequent series of securities of the entity that owns or operates the establishment (the original issuance is already exempt).

The bill narrows several existing exemptions. Current law exempts conveyances in which the transferred part of the property was not contaminated by a hazardous waste release and meets certain other conditions. The bill subjects such conveyances to the Transfer Act if the transferred part of the property was contaminated by a hazardous substances release. Current law provides exemptions for property conveyances through foreclosure and conveyance of a security interest in the property from the Transfer Act. The bill more narrowly defines the types of transactions that qualify for these exemptions.

The bill modifies other exemptions. Current law exempts any lease renewal, and the conveyance, assignment, or termination of a lease for less than 25 years. The bill instead exempts executions of leases for period of up to 99 years. While most lease renewals involve executions, the other transactions generally do not.

The law exempts a corporate reorganization that does not substantially affect the establishment's ownership. Current law, gives as examples of such reorganizations, dividend and stock distributions arising from a merger. The bill instead specifies that such reorganizations, restructure of a corporation by merger, spin-off, or other means, in which the establishment's direct owner remains the same are exempt. Current law exempts the transfer of stock or other ownership interests representing less than a majority of the voting power of the establishment's owner or operator. The bill instead exempts transfers of less than 40% of the entity's ownership.

Forms I, II, III, and IV

Under current law, one of four forms must be filed with DEP before the transfer takes place, with the type of form depending on whether there has been a hazardous waste spill on the property, and if so, whether it has been remediated.

Under current law, a Form I states, based on an investigation that complies with statutory requirements, that there has been no hazardous waste releases on the parcel. The bill instead only allows this form to be filed if there has been no spill, at the establishment, of hazardous wastes or certain hazardous substances. These are substances defined as hazardous under federal law (1) that the federal government designated as hazardous wastes after November 17, 1980, (2) for which there are remediation standards, and (3) for which there are remediation standards that include a process for calculating the numeric value of the substance.

Under current law, a Form II is filed if there has been a hazardous waste spill, but (1) it has been remediated or (2) DEP has determined that no remediation is needed to comply with its remediation standards. The bill extends these provisions to include properties where there has been a spill of a hazardous substance that has been remediated or determined by DEP not to need remediation. The bill also expands the circumstances in which this form is filed to include the transfers of property for which (1) a Form IV (described below) has been filed with the commissioner and (2) since that time there has been no spill, based on an investigation of the parcel, of hazardous wastes or hazardous substances. The investigation must meet the same standards as apply to an investigation conducted in connection with a Form I filing.

Under current law, a Form III is filed when (1) a hazardous waste spill has occurred on the property or its environmental condition is unknown, and (2) the person signing the form agrees to investigate the property and to remediate it according to DEP's standards. The bill expands the applicability of this form to include properties where there has been a hazardous substance spill. It expands the person's liability by requiring him to agree to remediate pollution caused by any release at the establishment, rather than just to remediate the parcel itself. It appears that this would require the person to agree to

remediate off-site pollution caused by a spill on the site.

Under current law, a Form IV is filed when there has been a hazardous waste spill and all of the necessary remediation tasks have been completed, other than (1) postremediation monitoring, (2) monitoring how natural processes reduce the contamination, or (3) the recording of a deed that restricts the future use of the land based on the degree to which it has been remediated. Under current law, the person signing a Form IV must agree to (1) conduct the monitoring in accordance with DEP's remediation standards, (2) conduct further investigations, if the monitoring indicates a need to take further steps, and (3) remediate the property in accordance with DEP's standards. The bill expands these provisions to apply to properties where there was a hazardous substances spill that has been remediated. It also requires the person to agree to conduct further investigation when needed, even if this is not based on the required monitoring.

Procedural Changes

The bill makes many changes in the way the forms described above are prepared and processed. By law, the transferor must (1) submit the form to the transferee before the transfer and (2) submit it to the commissioner no more than 10 days later. The bill specifies that the form submitted to the transferee must be complete. It requires the commissioner to notify the transferor as to whether he considers a Form I or II complete within 90 days of its submission to him.

The bill requires the person who signs a Form I to simultaneously submit a complete environmental condition assessment to the commissioner. The law already requires the completion of this assessment in connection with filings of a Form III or IV. The bill requires that a LEP supervise the preparation of the assessment. The bill also allows people who submitted a Form III to DEP before October 1, 1995, but who were barred from filing assessments because they were subject to enforcement actions, to file an assessment.

Under current law, if the property does not qualify for a Form I or II, the certifying party must prepare and sign a Form III or IV and submit it to the transferee and the commissioner. The bill instead allows any party to the transfer to prepare and sign the form. If no one else does

this, the transferor must. The transferor also must submit the form to the transferee and DEP. Under the bill, none of these parties is necessarily responsible for investigating and remediating the release. It appears that a Form III or IV submitted without the signature of a certifying party (the person who assumes this responsibility) would be considered incomplete, since the definition of these forms specifies that they bear this signature.

The bill increases, from 15 to 30 days, the amount of time the commissioner has between the submission of a Form III or IV and when he must notify the certifying party whether it is complete.

By law, when a person files a Form III or IV, the commissioner must determine whether (1) DEP must approve the remediation or (2) a LEP can verify that the investigation and remediation meet DEP standards. The bill requires DEP, in making its determination, to consider the potential risk to human health and the environment posed by a release of hazardous substances, as well as hazardous waste releases.

The bill allows the commissioner to order the transferor, transferee, or both to file a form if no else does or if the filed form is incomplete.

By law, if the commissioner notifies the certifying party that DEP approval is required, the party must (1) provide a schedule for submitting certain documents, (2) submit these documents on schedule, and (3) perform all the work identified in them. The bill adds scopes of work (overviews of the project) to these documents.

The bill requires that the investigations conducted in connection with the law be done in accordance with prevailing standards and guidelines. Current law requires them to be conducted in accordance with DEP regulations, once they are adopted or January 1, 2002, whichever is sooner. The bill requires the certifying party to a Form III or IV to give the commissioner copies (1) of all supporting documents relating to the investigation and remediation of the establishment, rather than just technical plans and reports and (2) in all cases, rather than just when DEP receives a written request for the information. It extends this submission requirement to parties certifying Forms I.

The bill requires the certifying party, rather than the transferee, to pay

the fees required by law.

The bill allows anyone who files a form to petition the commissioner to withdraw it. The person must make every reasonable effort to locate the transferor, transferee, and certifying party and must notify them by certified mail. They have 30 days to object to the petition. The commissioner can approve the petition if he finds that the property or business was not an establishment or the transaction not a transfer when the form was submitted. If the commissioner approves the petition, the certifying party has no further obligations, but DEP keeps the form and fee.

Penalties

Under current law, a person is subject to a fine of up to \$100,000 for (1) knowingly giving any false information on a document or (2) failing to comply with the requirements of these provisions. The bill eliminates the penalty for these offenses in connection with the law that provides for voluntary remediation of sites in areas with poor water quality. It subjects violations to DEP's general penalty provisions. Under these provisions, the penalty ranges from a fine of up to \$25,000 for a simple violation to a fine of up to \$50,000, imprisonment for up to three years, or both, for knowing violations.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 26 Nay 2